

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION**

CIVIL ACTION No. 04-11934-GAO

NOAH GREENBERG,  
Plaintiff

v.

TOWN OF FALMOUTH and  
GANNETT FLEMING, INC.,  
Defendants

**PLAINTIFF'S PRETRIAL DISCLOSURES PURSUANT  
TO FEDERAL RULE OF CIVIL PROCEDURE 26(a)(3)**

**A. The name, and if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises:**

The plaintiff, Noah Greenberg

William B. Owen, Director or former Director, Town of Falmouth, Department of Public Works, address indicated in deposition

Jeffrey J. Alberti, project manager, Gannett Fleming, Inc., Gannett Fleming Engineers and Architects, P.C., Gannett Fleming Engineers and Planners, 150 Wood Road, Braintree, Massachusetts

**Witnesses the plaintiff may call if the need arises:**

The keeper of the records, Town of Falmouth, Town Hall Square, Falmouth, Massachusetts

The keeper of the records, Gannett Fleming, Inc. (or related Massachusetts corporate entity), 150 Wood Road, Braintree, Massachusetts

Mr. Robert Whritenour, Jr., Town Administrator, Town of Falmouth, Town Hall Square, Falmouth, Massachusetts

Frank K. Duffy, Jr., Esquire, 157 Locust Street, Falmouth, Massachusetts 02541

Thomas A. Kahrl, Esquire, 308 Falmouth Woods Road, North Falmouth, Massachusetts 02556

**B. The designation of those witnesses whose testimony is expected to be presented by means of a deposition, and if not taken stenographically, a transcript of the pertinent portions of the deposition testimony.**

The plaintiff does not expect that any witnesses entire testimony will be presented by deposition, but he does expect to rely on stenographically recorded deposition testimony in his case-in-chief and as impeachment.

**C. An appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises**

Certificates of Copyright VAu 566-971 & VAu 566-972

Noah Greenberg Associates architectural drawings (four pages total, one color)

August 26, 1998, correspondence of Noah Greenberg to Mr. Bill Owen, Director, Department of Public Works, project cost estimate (one page) (Town deposition Exhibit No. 10)

February 7, 2000, correspondence of Noah Greenberg to Mr. Bill Owen (one page) (Town deposition Exhibit No. 16)

Town of Falmouth Department of Public Works Request for Qualifications Architectural Design Services Public Works Maintenance Facility Addition and Renovation, May 18, 2001 (six pages plus Appendix A) (four page appendix with one color page) (Town deposition Exhibit No. 12; GF deposition Exhibit No. 4)

June 5, 2001, Gannett Fleming notes of meeting re: "Falmouth Public Works Maint. Facility," GF document number GF 00261 - 00265, four pages, selected portions (Town deposition Exhibit No. 17, GF deposition Exhibit No. 3)

June 18, 2001, correspondence of Noah Greenberg, RA, to Mr. William B. Owen, Director of Public Works, one page (Town deposition Exhibit No. 18)

June 21, 2001, Gannett Fleming Statement of Qualifications, Gannett Fleming document number 00719 - 00793 (selected portions primarily from first 11 ± pages)

January 30, 2002, correspondence of Michael E. Haire, P.E., Vice President, Gannett Fleming, to Mr. William B. Owen, P.E., Department of Public Works, two pages with four page attachment--scope of services, GF document number GF 00420 - 00425 (GF deposition Exhibit No. 8)

all contracts between the Town of Falmouth and Gannett Fleming, Inc., or Gannett Fleming Engineers and Architects, P.C., and all amendments thereto (understood to be Amendment Nos. 1, 2, and 3) and various covering correspondence regarding the exchange and execution of the same

June 7, 2002, correspondence of Richard M. Russell to Mr. Donald B. Nicholas (one page with attachments) (GF deposition Exhibit No. 19)

1966 plans Falmouth Department of Public Works including but not limited to A - 1, A - 2, H - 1, and L - 1

various of Gannett Fleming proposed and final (bid set) plans including but not limited to:

from November 2001: GF document numbers GF00024, 00025, 00026, 00021, (GF deposition Exhibit No. 22A - 22D) and GF 00027

from January 2003: GF document numbers GF00036, 00034, 00029, 00016, 00018, 00019, 00020, 00033, 00032, 00028, 00017, 00031, 00030, 00037

from February 2003: GF document numbers GF 00078 - 00083 (GF deposition Exhibit No. 26) and GF 00084 - 00087

from March 2003: GF document numbers GF 00069 - 00070 (GF deposition Exhibit No. 27) and GF 00071 - 00075 and GF 00543

from April 2003: GF document numbers GF 00023 and GF 00022

final plans as provided by the Town of Falmouth including but not limited to:  
A - 100 (GF deposition Exhibit No. 21), 101, 102, 103, A - 200, 201, A - 300, AX - 501, A - 502, A 601, A 602, A 603, A 604, S 102

GF elevations (color) including GF00043, GF00079-00082 and elevations provided by the Town

April 1, 2003, correspondence of Donald B. Nicholas, P.E., Vice President, Gannett Fleming, Inc., to Mr. William B. Owen, P.E., Department of Public Works (one page reflecting two signatures) (Town deposition Exhibit No. 25, GF deposition Exhibit No. 28 )

February 13, 2004, memorandum of William B. Owen, Director, to Robert Whritenour, Jr., Town Administrator, two pages, "Summary Cost Estimate" (GF document numbers GF 00187, 00188, 00437, 00438)

December 9, 2004, memorandum of William B. Owen, Director, to Carol Martin, Town Treasurer, one page, "anticipated schedule of payments"

AIA Document A101 Standard Form of Agreement Between Owner and Contractor (only one page was provided in discovery but this document is believed to consist of 13 pages)

**Also expected to be referenced:**

photographs of completed structure  
chalks: comparisons of drawings  
defendants' interrogatory answers  
affidavits submitted by defendants  
allegations set forth in Gannett Fleming, Inc.'s, cross-claim against the Town of Falmouth

**Document or other exhibits, including summaries of other evidence, that the plaintiff may offer if the need arises:**

Town of Falmouth Request for Proposals, reflecting the signature William B. Owen, P.E., Director of Public Works, 1993 (one page) (Town deposition Exhibit No. 1 (first page of))

Town of Falmouth Department of Public Works Request for Architectural Consultant Services Municipal Service Maintenance Facility (three pages) (Town deposition Exhibit No. 1 (pages two through 4 (end)))

February 1, 1994, correspondence of William B. Owen, Director, Department of Public Works, to Mr. Noah Greenberg, Robert Charles Group (one page) (Town deposition Exhibit No. 5)

August 5, 1994, correspondence of Noah Greenberg, AIA, to Mr. William B. Owen, Director of Public Works (one page) (Town deposition Exhibit No. 7)

October 24, 1994, statement of Charles F. Jacobs, A.I.A. (for Robert Charles Group)

August 26, 1998, statement of Noah Greenberg Associates (one page) (with Town of Falmouth internal processing information) (Town deposition Exhibit No. 11)

Town of Stoughton Massachusetts Request for Proposals Architectural Design Stoughton Police Station Renovation and Addition, six pages (Town deposition Exhibit No. 14)

photograph existing conditions (Town deposition Exhibit No. 13)

May 17, 2001, memorandum from William B. Owen, Director, to Heather Harper, Asst. Town Administrator and others, referencing design funding of \$150,000, one page

September 10, 2001, correspondence of Richard M. Russell to Mr. Robert Whritenour, Jr., Town Administrator (three pages) (it appears the original, a copy of which was provided by the Town, is unsigned)

January 29, 2002, Fax Transmittal from Jeff Alberti, Gannett Fleming Engineers and Planners, to Fidaa Barbar, SAR Engineering, GF document number GF 00434 (GF deposition Exhibit No. 10)

June 7, 2002, correspondence of Richard M. Russell to Mr. Robert Whritenour, Jr., Town Administrator (three pages) (it appears the original, a copy of which was provided by the Town, is unsigned)

August 6, 2002, correspondence of Richard M. Russell to Frank K. Duffy, Jr., Esquire (two pages)

February 11, 2003, Fax Transmittal of Jeff Alberti to John Masland, regarding boring locations, three pages (GF document numbers GF 00363 - 00365)

May 22, 2003, correspondence of Richard M. Russell to Mr. Robert Whritenour, Jr., Town Administrator (one page) (it appears the original, a copy of which was provided by the Town, is unsigned)

May 22, 2003, correspondence of Richard M. Russell to Frank K. Duffy, Jr., Esquire (one page)

January 15, 2004, correspondence of Richard M. Russell to Frank K. Duffy, Jr., Town Counsel (one page)

January 28, 2004, memorandum of Jeff Alberti to Paul D. Smith and others, one page, regarding Howe Engineering report (GF document number GF 00190 and perhaps Howe Report, ten pages, GF 00195 - 00204)

March 15, 2004, correspondence of Richard M. Russell to Edward J. DeWitt, Esquire, Office of the Town Counsel (two pages)

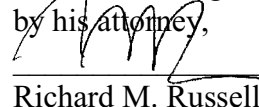
various Gannett Fleming, Inc., invoices, including invoices reflecting Town of Falmouth processing (as provided by the Town or Gannett Fleming)

GF project notebook, GF document number GF 00274 et. cet. (selected portions) (GF deposition Exhibit No. 20)

GF document numbers GF 00139, 00244 - 00245, 00394 (GF deposition Exhibit No. 30)

existing conditions plan GF 00015, 00035

Respectfully submitted,  
the plaintiff,  
Noah Greenberg,  
by his attorney,



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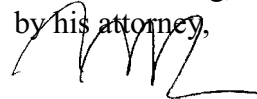
Richard M. Russell  
Heritage Place Condominium  
205 Worcester Court • Unit B 2  
Falmouth, Massachusetts 02540  
Telephone No. 508.457.7557  
BBO No. 561997

Dated: May 8, 2006

### **CERTIFICATE OF SERVICE**

I hereby certify that the Plaintiff's Pretrial Disclosures Pursuant to Federal Rule of Civil Procedure 26(a)(3), filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies need not be sent because all parties are represented by registered participants.

Respectfully submitted,  
the plaintiff,  
Noah Greenberg,  
by his attorney,



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205 Worcester Court • Unit B 2  
Falmouth, Massachusetts 02540  
Telephone No. 508.457.7557  
BBO No. 561997

Dated: May 8, 2006